

September 27, 2002

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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October 8, 2002 (1:29PM)

Before the Commission

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

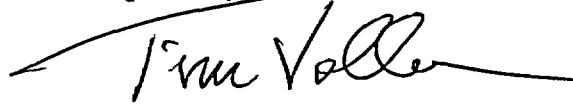
In the Matter of)	
)	
PRIVATE FUEL STORAGE L.L.C.)	Docket No. 72-22
)	
(Private Fuel Storage Facility))	ASLBP No. 97-732-02-ISFSI

SKULL VALLEY BAND'S NOTICE OF DECISION
IN A RELATED CASE, BLACKBEAR V. NORTON
("CONTENTION OGD O" – Environmental Justice)

By Memorandum and Order, dated March 7, 2002, the Commission undertook review of the February 22, 2002, decision of the Atomic Safety and Licensing Board (LBP-02-08), which granted in part and denied in part Applicant's Motion for Summary Disposition of Contention O (environmental justice) filed in this matter by Intervenor Ohngo Devia Gaudadeh (OGD). The Commission also set a briefing schedule, and all briefs have been filed.

Intervenor Skull Valley Band of Goshute Indians is hereby providing notice to the Commission of an Order issued on September 18, 2002, in Blackbear v. Norton, Case No. 2:01-CV-00317PGC (U.S. Dist. Court, D. Utah, filed May 2, 2001), granting the Department of the Interior's Motion to Dismiss the Complaint. A copy of the Order of Dismissal is attached to this Notice. The Atomic Safety and Licensing Board had cited the case in its February 22, 2002, decision. See LBP-02-08, at p. 35, note 53.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that copies of the Intervenor Skull Valley Band's Notice of Related Case were served on the persons listed below (unless otherwise noted) by e-mail with conforming copies by U.S. mail, first class, postage prepaid, this 27th day of September, 2002.

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FILED
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH CENTRAL DIVISION 9:45

COLLEEN BLACKBEAR,
MARGARET BLACKBEAR,
MARIEA BLACKBEAR, SAMMY
BLACKBEAR SR., ET AL.

Plaintiff,

vs.

GAIL A. NORTON, SECRETARY
OF THE UNITED STATES
DEPARTMENT OF THE
INTERIOR; THE UNITED
STATES DEPARTMENT OF THE
INTERIOR, THE BUREAU OF
INDIAN AFFAIRS, ET AL.

Defendants.

DISTRICT OF UTAH
BY: _____
DEPUTY CLERK

ORDER OF DISMISSAL

Case No. 2:01-CV-00317PGC

Before this Court is a motion to dismiss the Blackbear Plaintiffs' Complaint. Because this Court finds that Plaintiffs' claims are either moot or, pursuant to FED. R. Civ. P.12(b)(6), fail to state a claim upon which relief can be granted, the motion is GRANTED.

Plaintiffs' Complaint arises from Defendants' review and conditional approval of a lease between the Skull Valley Band of Goshute Indians and Private Fuel Storage, L.L.C., for storage of spent nuclear fuel at a facility to be located on the Skull Valley Indian Reservation. Plaintiffs' first cause of action is dismissed because, as Plaintiffs' counsel conceded at oral argument, Plaintiffs' claim rests on the assertion that the BIA has not issued an administrative decision. However, as Plaintiffs' counsel also conceded at argument, that administrative decision was

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rendered on August 20, 2001, mooted Plaintiffs' first cause of action. The Western Regional Director of the BIA issued a decision concluding that appeal to the Regional Director was premature, that the Plaintiffs lacked standing to appeal, and that Plaintiffs had failed to seek and exhaust their tribal remedies.

Because Plaintiffs' second and fifth causes of action directly arise from the first cause of action, this Court finds that they likewise must be dismissed as moot.

Plaintiffs' third and fourth causes of action allege that Defendants violated FOIA and the Privacy Act. However, Plaintiffs' requests are overly broad and do not reasonably describe the records that Plaintiffs seek. Hence, Plaintiffs' third and fourth causes of action fail to state a claim upon which this Court can grant relief, and must be dismissed with prejudice.

Finally, Plaintiffs' sixth cause of action must be dismissed for failure to state a claim upon which relief can be granted. Because Plaintiffs have sued Defendants in their official capacity, Plaintiffs' may not recover damages from Defendants under 42 U.S.C. §§ 1981, 1983, 1985, 1986 and 1988. Defendants have sovereign immunity from suit under these acts. Plaintiffs' sixth cause of action is dismissed with prejudice.

As the Court recognized at oral argument, Plaintiffs are free file a new Complaint reflecting events that have transpired since the Complaint at issue in this case was filed. However, the Complaint filed in this case is dismissed in its entirety. SO ORDERED.

DATED this 18th day of September, 2002



Paul G. Cassell
United States District Judge